

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

VOICES FOR INTERNATIONAL BUSINESS AND
EDUCATION, INC. d/b/a INTERNATIONAL HIGH
SCHOOL OF NEW ORLEANS

and

Cases 15-CA-182632¹
15-CA-187456

UNITED TEACHERS OF NEW ORLEANS
LOCAL 527, LFT, AFT

Alexandra K. R. Schule, Esq., for the General Counsel.

Susan Fahey Desmond, Esq. (Jackson Lewis P.C., New Orleans, Louisiana); Marshall A. Hevron and Brooke Duncan III, Esqs. (Adams and Reese, New Orleans, Louisiana)

for the Respondent.

Julie M. Richard-Spencer, Esq., (Robein, Urann, Spencer, Richard & Congemi, APLC, Metairie, Louisiana), for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was submitted to me on a stipulated record on March 20, 2017. The United Teachers of New Orleans filed the charges in this matter on August 23, 2016 and November 2, 2016. The General Counsel issued a consolidated complaint on December 27, 2016.

The General Counsel alleges that Respondent is violating Section 8(a)(1) of the Act by maintaining various rules in its Employee Handbook since about August 1, 2016. The parties have stipulated that Respondent has maintained these rules at least since August 1, 2016. They have also stipulated that Respondent's employees are all provided with the Handbook, that employees are required to acknowledge receipt of the Handbook and that employees are expected to comply with the Handbook.

¹ The lead case in this matter had been 15-CA-179217. That case has been withdrawn entirely by the General Counsel.

On the entire record, after considering the briefs filed by the General Counsel, Respondent² and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, International High School of New Orleans (IHSNO) a non-profit corporation, operates a public charter school in New Orleans, Louisiana. It annually derives gross revenues available for operating expenses in excess of \$1,000,000. Respondent purchases and receives at its New Orleans facility goods valued in excess of \$50,000 directly from points outside of Louisiana. I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.³

II. ALLEGED UNFAIR LABOR PRACTICES

The allegedly violative rules maintained by Respondent in its Employee Handbook are as follows:⁴

Section 2.04 Investigation/Complaint Procedure [:] All complaints of harassment, discrimination, or retaliation will be promptly investigated. If the investigation substantiates the accusations, the appropriate corrective action will be taken. This may include, but not be limited to, reprimand, suspension or dismissal, depending on the nature and severity of the offense. Appropriate action will also be taken in the event the accusations are intentionally false or malicious in intent.

IHSNO encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken before relationships become irreparably strained. Therefore, while no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment. Any reported allegations of harassment, discrimination or retaliation will be investigated promptly. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

² Respondent's brief only addresses its jurisdictional argument, which was rejected by the Board. It does not address the specific issues relating to the legality of its rules.

³ Respondent contests the Board's jurisdiction. However, the Board rejected its position on February 1, 2017 in Case 15-RC-175505. It found, contrary to Respondent's assertion, that Respondent is not exempt as a political subdivision under Section 2(2) of the Act. The Board reaffirmed that Respondent is subject to Board jurisdiction on May 5, 2017, 365 NLRB No. 66.

⁴ I have rearranged the order in which the allegedly violative rules appear in the complaint. I list them in the order in which they appear in Respondent's handbook, Jt. Exh. -8

Employees of IHSNO shall be expected to uphold the mission of the school and comply with all policies, procedures, work rules and expectations of the employer. For the success of IHSNO it is very important that employees be aware of and follow proper procedures for discussing and seeking to resolve issues that are troubling them.

In case of disciplinary action, or in the case where an employee wishes to discuss working conditions, employment practices or differences of interpretation of procedures, the employee should first seek resolution by discussing the issue with his/her immediate supervisor. Gossiping about problems and not following the proper procedures to resolve them is extremely damaging to the school and indicates a lack of support.

The following are the steps an employee should take to resolve issues:

1. The employee should speak with his/her immediate supervisor about the issue as soon as the incident happens. If the supervisor was involved in the issue, the employee should speak with the next level supervisor as soon as the incident happens.
2. If the issue is not resolved, the grievance should be put in writing with specific details.
 - (i) Employees should direct their written grievance to their Supervisor within 2 business days. If the supervisor was involved in the issue, the employee should direct their written grievance to the next level supervisor within 2 business days.
 - (ii) If the issue is not resolved to the employee's satisfaction by the Supervisor or the next level supervisor, the employee may choose to forward the written grievance within 48 business hours, including details on action by the Supervisor or the next level supervisor to the Head of School. The immediate supervisor should be copied on the letter to the Head of School.
3. The Head of School evaluates the grievance and makes a determination for resolution. Evaluation may include meetings with the employee, supervisor or others involved in the grievance. Depending on urgency, the Head of School has up to two weeks to respond with a determination for resolution in writing. The Head of School is the final arbiter. If the issue involves the Head of School, the issue will have to be brought to the Board Chair.

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action. Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately. Responsive action may

include, for example, training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination, as IHSNO believes appropriate under the circumstances.

SECTION 3.14 TECHNOLOGY USAGE AND PRIVACY[:] (A)COMPUTER SOFTWARE (UNAUTHORIZED COPYING)

IHSNO DOES NOT CONDONE THE ILLEGAL DUPLICATION OF SOFTWARE. THE COPYRIGHT LAW IS CLEAR. THE COPYRIGHT HOLDER IS GIVEN CERTAIN EXCLUSIVE RIGHTS, INCLUDING THE RIGHT TO MAKE AND DISTRIBUTE COPIES. TITLE 17 OF THE U.S. CODE STATES THAT "IT IS ILLEGAL TO MAKE OR DISTRIBUTE COPIES OF COPYRIGHTED MATERIAL WITHOUT AUTHORIZATION" (SECTION 106). THE ONLY EXCEPTION IS THE USERS' RIGHT TO MAKE A BACKUP COPY FOR ARCHIVAL PURPOSES (SECTION 117).

The law protects the exclusive rights of the copyright holder and does not give users the right to copy software unless the manufacturer does not provide a backup copy. Unauthorized duplication of software is a federal crime. Penalties include fines up to and including \$250,000 and jail terms of up to five years.

Even the users of unlawful copies suffer from their own illegal actions. They receive no documentation, no customer support and no information about product updates.

- IHSNO licenses the use of computer software from a variety of outside companies. IHSNO does not own this software or its related documentation and, unless authorized by the software manufacturer, does not have the right to reproduce it.

- With regard to use on local area networks or on multiple machines, IHSNO employees shall use the software only in accordance with the software publisher's license agreement.

- IHSNO employees learning of any misuse of software or related documentation within the company must notify the IT immediately.

- According to the U.S. Copyright Law, illegal reproduction of software can be subject to civil damages and criminal penalties, including fines and imprisonment. IHSNO employees who make, acquire or use unauthorized copies of computer software shall be disciplined as appropriate under the circumstances. Such discipline may include termination

(B)COMPUTERS, INTERNET, ELECTRONIC MAIL, AND VOICE MAIL USAGE POLICY

The school provides and maintains the following forms of electronic communication, messaging agents and electronic facilities: internal and external electronic mail (e-mail), telephone voice mail, internet access,

computer hardware and software. As a condition of providing the previously identified communications access to its employees, IHSNO places certain restrictions on workplace use of the same.

The internal communication systems, as well as the equipment and data stored, are and remain at all times the property of IHSNO. Accordingly, all messages and files created, sent, received or stored within remain the property of IHSNO. System-wide distributions of e-mail (e.g. announcements, bulletins, newsletters) require approval from the Head of School, or his/her designee, in advance of the distribution. School-wide distributions of e-mail (e.g. announcements, bulletins, newsletters) require approval from the Director or Principal, in advance of the distribution. Organization-wide distribution of email (announcements, bulletins, newsletters, etc.) requires prior approval from the Head of School.

All e-mail communication generated in the course of an employee's work duties must be produced from an employee's assigned IHSNO e-mail account (*employee@ihsnola.org*). An employee's personal e-mail account may not be used to conduct school business.

IHSNO can retrieve and review any message or file composed sent or received. It should be noted that although a message or file is deleted or erased, it is still possible to retrieve the message. Therefore, ultimate privacy of messages cannot be assured to anyone.

The content of e-mail and/or voice mail messages may not contain anything that would reasonably be considered offensive or disruptive to any employee. Offensive content would include, but is not limited to, sexual comments or images, racial slurs, gender specific comments or any comments that would offend someone on the basis of their age, sex, sexual orientation, religion, political beliefs, national origin or disability or use of profanity.

Employees are advised that use of the internet and e-mail provided by IHSNO expressly prohibits the following:

- Violation of copyright laws.
- Sending, receiving, printing or otherwise disseminating proprietary data, trade secrets or other confidential information of IHSNO in violation of company policy or proprietary agreements.
- Offensive or harassing statements or language including disparagement of others based on their race, national origin, gender, sexual orientation, age, disability, religion or political beliefs.

All technology use should pertain only to the business of IHSNO. Violation of this policy may be grounds for disciplinary action, up to and including termination of employment. In cases involving less serious

violations, disciplinary action may consist of a warning or reprimand. Remedial action may also include counseling, changes in work assignments, or other measures designed to prevent future misconduct.

5 (C)CELL PHONE, SMARTPHONE, AND OTHER PERSONAL DEVICES USE POLICY

Employees engaged in the supervision of students are prohibited from using a cell phone while students are present. Likewise, the use of Bluetooth or other “in-ear” communication devices is prohibited during
10 regular school hours.

All employees are advised to carry their cell phones on their person in case of emergencies. Phones should be on vibrate mode during the school day. Employees are not to make personal calls or text during instruction
15 time or during the supervision of students.

Any employee who violates this Cell Phone, Smartphone, and other Personal Devices Use Policy may be subject to discipline, up to and including termination.
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(D)INTERNET USE AND SOFTWARE DOWNLOADING POLICY

This policy defines the proper employee use of the IHSNO Internet Access and the procedures for handling software download opportunities.

• While using the Internet, respect the privacy of others and do not intentionally obtain copies, modify files, passwords or data that belong to others. Do not represent yourself as someone else by using another’s account. Do not forward personal material without prior consent. Do not use language that is abusive, profane or offensive.
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• When using items from the Internet, respect the legal protection provided by copyright licenses to programs, books, articles and data.
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• When offered links to material on the Internet, do not follow the links unless you are aware of the origin of the message. Do not download software upgrades or suspect attachments without contacting the IT Department beforehand. Software upgrades often are not adequately tested and can introduce incompatible code making the existing system unstable. Attachments may contain viruses or malicious code that can compromise the security of the in-house system.
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• While using the Internet, adhere to existing Federal and State laws regarding electronic communication. This includes regulations re: accessing information without authorization, giving passwords out to others or causing a system to malfunction. These laws carry both civil and criminal penalties.
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• Do not access material that is fraudulent, harassing, sexually explicit, or offensive (including offensive material concerning sex, race, color, national origin, religion, age, disability or other characteristic protected by law).
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Employees who are in doubt as to the protocol and risks involved in using the Internet or in downloading software upgrades offered on the Internet should contact the IT Department – technology.support@ihnsola.org.

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- (a) **Section 3.15 Social Media/Networking[:]** Whether or not an employee chooses to participate in a blog, wiki, online social network or any other form of online publishing or discussion it is his or her own decision. Free speech laws protect educators who want to participate in social media, but courts have ruled that schools can discipline teachers if their speech, including online postings, negatively impacts the school. The International High School of New Orleans social media guidelines strive to create an atmosphere of trust and individual accountability, keeping in mind that information produced by IHSNO's employees is a reflection on the school.

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Following are IHSNO's social media and networking policies. The absence of, or lack of explicit reference to a specific site does not limit the extent of the application of this policy. Where no specific policy or guidelines exist, employees should use their professional judgment and take the most prudent action possible.

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Violation of any one of the following policies can result in disciplinary action, up to and including termination.

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(a) Profiles and Identity

1. Employees may not identify themselves as representatives of the International High School of New Orleans in any online social media.
2. Remember your association and responsibility with the International High School of New Orleans in online social environments. Ensure your profile and related content is consistent with how you wish to present yourself with colleagues, parents and students. Remember how you represent yourself online should be comparable to how you represent yourself on campus.

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(B) PERSONAL RESPONSIBILITY

3. IHSNO employees are personally responsible for the content they publish online.
4. IHSNO employees are prohibited from "friending" current IHSNO students, or former students under the age of 21.
5. School computers, internet access, software or e-mail addresses may not be used for an employee's personal social networking or posting.
6. Personal social networking or posting is not allowed during school hours.
7. IHSNO student information or images may not be used in personal social media postings.
8. IHSNO's name, address, website, image, logo or phone numbers

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should not appear in postings. IHSNO employees are encouraged to share highlights of the organization's events through only sharing official IHSNO social media postings.

9. Proprietary or confidential school information may not be discussed, referenced or posted.
10. Employees should refrain from recommending or providing online referrals for other IHSNO employees.
11. Your online behavior should reflect the same standards of honesty, respect and consideration that are expected at IHSNO.
12. What is inappropriate at school should be deemed inappropriate online.
13. The lines between public and private, personal and professional are blurred in the digital world. You should ensure that content associated with you is consistent with the values of IHSNO and your work at IHSNO.

(b)Disclaimers

- IHSNO employees must include disclaimers within their postings that the views are their own and do not reflect on their employer. For example, "The postings on this site are my own and do not represent the International High School of New Orleans's positions, strategies, or opinions."
- This standard disclaimer does not by itself exempt IHSNO employees from a responsibility to protect IHSNO's integrity when posting.

Section 3.24 Confidentiality[:] The International High School of New Orleans is subject to the Federal Family Educational Rights and Privacy Act (FERPA) which protects the privacy of student informational records. It is IHSNO's policy that no personal student information is released without expressed written permission from parents/guardians. A complete copy of FERPA and its applicable guidelines can be found on the FERPA website.

It is inappropriate to discuss the affairs of individual students, teachers or staff members with others. Many times someone is harmed by an off-hand piece of gossip or idle talk. Teachers, likewise, should always avoid making comparisons between students in a class.

Employees should be cautious when contacted by attorneys concerning parental divorces or child custody disputes. Immediately consult the Principal/Head of School regarding such contacts.

Personal information is a confidential matter between the school and individual employees and should be guarded per IHSNO's confidentiality policy.

(b) **Section 3.25 Conflict Resolution[:]** IHSNO employees are expected to uphold the mission and vision of the school and comply with all policies, procedures, work rules and expectations of the employer. For the success of IHSNO it is very important that employees be aware of and follow proper procedures for discussing and seeking to resolve issues that are troubling them.

In case of disciplinary action, or in the case where an employee wishes to discuss working conditions, employment practices or differences of interpretation of procedures, the employee should first seek resolution by discussing the issue with his/her immediate supervisor. Gossiping about problems and not following the proper procedures to resolve them is extremely damaging to the school and indicates a lack of support.

The following actions need to be taken to resolve issues:

1. The employee should speak with his/her immediate supervisor about the issue as soon as the incident happens. If the supervisor was involved in the issue, the employee should speak with their supervisor's supervisor as soon as the incident happens.
2. If the issue is not resolved, the grievance needs to be put in writing with specific details.
 - i. Employees should direct their written grievance to their Supervisor within 2 business days. If the supervisor was involved in the issue, the employee should direct their written grievance to Head of School within 2 business days.
 - ii. If the issue is not resolved to the employee's satisfaction by the Supervisor the employee may choose to forward the written grievance within 48 business hours, including details on action by the Supervisor, to the Head of School. The immediate supervisor should be Bcc'd on the letter to the Head of School.
3. The Head of School evaluates the grievance and makes a determination for resolution. Evaluation may include meetings with the employee, supervisor or others involved in the grievance. Depending on urgency, the Head of School has up to two weeks to respond with a determination for resolution in writing. The Head of School is the final arbiter. If the issue involves the Head of School, the issue will have brought to the Board Chair.

Conflicts between coworkers and peers follow a similar process as noted above.

1. The employee should speak with their peer about the issue as soon as the incident occurs.
2. If an employee asks a supervisor to participate in an informal conflict resolution process, the supervisor is expected to participate as part of the supervisor's or manager's role. If the employee identifies a dispute with a co-worker who is not a supervisor or manager, the co-worker is encouraged to participate in the process.

Section 8.03 Offer Letters, Renewal, Non-Renewal[:] A supervisor may recommend Non-Renewal of an offer letter, effective at the end of the current school year. The reasons for non-renewal cannot be based on an employee's exercise of Constitutional rights, or based unlawfully on an employee's race, color, religion, sex, national origin, disability, or age. Non-renewal may be for any reason, as all employees are at-will.

Reasons for a recommendation of Non-Renewal may be based on one of the following, but not limited to:

- Deficiencies pointed out in observation reports, appraisals or evaluations, corrective actions supplemental memoranda, or other communication.
- Failure to fulfill duties or responsibilities.
- Incompetency or inefficiency in the performance of required or assigned duties.
- Inability to maintain discipline in the classroom or at assigned school-related functions.
- Insubordination or failure to comply with official directives.
- Failure to comply with policies or administrative regulations.
- Conducting personal business during school hours.
- Reduction in Force (RIF) because of financial exigency or program change.
- Drunkenness or excessive use of alcoholic beverages; illegal use of drugs, hallucinogens, or other substances.
- The possession, use, or being under the influence of alcohol, alcoholic beverages, or drugs and narcotics while on school property, working in the scope of the employee's duties, or attending any school or school sponsored activity.
- Conviction of a felony or any crime involving moral turpitude.
- Failure by an employee to report his or her indictment, conviction, or deferred adjudication for any felony or any crime involving moral turpitude as required by policy.
- Failure to meet the IHSNO 's standards of professional conduct.
- Failure to comply with reasonable requirements regarding certification, advanced coursework and/or professional improvement and growth.
- Disability, not otherwise protected by law, which impairs performance of required duties.

- Immorality which IHSNO determines is not in conformity with the accepted moral standards of the community. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, or depravity.
- Any activity, school-connected or otherwise, because of the publicity given it, or knowledge of it among students, faculty, community, that impairs or diminishes the employee's effectiveness in the organization.
- Reasons specified in individual employment offer letters reflecting special conditions of employment, such as, but not limited to failure to fulfill requirements for certification.
- Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, students, or colleagues.
- A lack of student progress.
- Physical or verbal assault on an employee, parent, visitor or student.
- Falsification of records or other documents related to the organization's activities.
- Falsification of required information on an employment application.
- Misrepresentation of facts to a supervisor.
- Any attempt to encourage or coerce a child to withhold information from the child's parent or administration.
- Negative behavior and attitude.
- Disparaging the school, including board members, employees, students, or family members of students.
- Excessive tardiness, absences, or missed appointments.
- Poor or sub-par job performance.

Analysis

General Legal Principles

The Board has held that an employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights, *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). As stated above, a rule is unlawful if it explicitly restricts activities protected by Section 7. If this is not true a violation is established by a showing that 1) employees would reasonably construe the language to prohibit Section 7 activity; and/or 2) that the rule was promulgated in response to protected activity and/or 3) that the rule has been applied to restrict the exercise of Section 7 rights, *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004).

In *Lutheran Heritage* the Board retreated somewhat from its prior decisions in light of the decision of United States Court of Appeals for District of Columbia in *University Medical Center v. NLRB*, 335 F. 3d 1079 (D.C. Cir. 2003). In that case the Court declined to enforce the Board's decision at 335 NLRB 1318 (2001) regarding a rule prohibiting "disrespectful conduct." In *Lutheran Heritage*, the Board stated that it

would not conclude that a reasonable employee would read a rule to apply to Section 7 activity simply because the rule *could* be so interpreted.

Respondent's complaint procedure and conflict resolution rules (Sections 2:04 and 3:25)

5 Under current Board law, Respondent's complaint procedure and conflict resolution rules violate the Act in instructing employees to first seek resolution of workplace issues with their supervisor and discouraging gossip. This instruction implicitly prohibits employees from airing their employment-related issues with other employees in lieu of, or prior to taking a complaint to management, *Hyundai America Shipping Co.*, 357 NLRB 860, 872 (2011) rev'd in relevant part 805 F. 3d 309 (D.C. Cir. 10 2015).

15 An employee who is inhibited from going first to fellow workers with an issue risks sacrificing the protection of the Act, in that their complaint might not be judged "concerted" within the meaning of the Act, whereas if they go to management with or at the behest of others, their complaints are clearly protected.⁵ Indeed, an employee may wish to determine whether other employees share his or her concerns before approaching management. They may wish to do so to determine whether an issue is worth raising to management, or to make retaliation against them less likely.

20 Respondent's "chain of command" rule also violates the Act in interfering with the right of employees to air complaints about their working conditions to the general public, a union, and the parents who send their children to the international school, *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990); *Guardsmark, LLC*, 344 NLRB 809 (2005); *Allied Aviation Service of N.J.*, 248 NLRB 229 (1980).

Respondent's technology usage rule (Section 3:14)

25 Respondent has given its employees access to its email system. Therefore it must allow employees to use the system for protected communications absent special circumstances, *Purple Communications, Inc.*, 361 NLRB No. 126 (2014).

I find the following aspects of Respondent's technology rules to be violative of Section 8(a)(1):

30 Requiring prior approval from management for the mass distributions of email: An employee would reasonably conclude that this rule requires approval from management for any mass email on a protected subject, such as wages, hours and other terms and conditions of employment, *Cellco Partnership d/b/a Verizon Wireless*, 365

⁵ In *Myers Industries (Myers I)*, 268 NLRB 493 (1984), and in *Myers Industries (Myers II)* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." However, the activities of a single employee in enlisting the support of fellow employees in mutual aid and protection is as much concerted activity as is ordinary group activity.

NLRB No. 38, slip op. 1, fn. 3 (February 4, 2017) Any rule that requires employees to seek the permission of management as a precondition for engaging in protected activity on non-working time is unlawful on its face, *Brunswick Corp.*, 282 NLRB 794 (1987).

Technology use limited to the business of Respondent: This limitation would likely be read to prohibit employee use of Respondent's email system for dissemination of information or opinions regarding work-related matters of mutual concern, e.g., Respondent's rules regarding employee conduct. This rule is in direct conflict with the Board's decision in *Purple Communications*.

Do not forward personal email without prior consent: The Board has already found that a prohibition against disseminating "personal information and documents" to be overly broad and thus illegal, *Flex Frac Logistics, LLC*, 358 NLRB 1131 (2012).⁶ Respondent's rule is not saved by the fact that an employee could forward an email with the sender's consent. An employee has a protected right to forward emails to which the sender might not consent, for example, a negative responsive from a manager on a matter related to employment, or an email which would establish that activities were concerted and not solely by and on behalf of the employee his or herself. Another example would be an employee forwarding an email to establish that an employee had tried to enlist the support of others even though they were not in agreement.

Respondent's prohibition in Section (d) Internet Use and Software Downloading Policy, against accessing offensive content in emails and voice mails would reasonably be read to pertain to matters similar given as examples, such as racial slurs or comments about a person's sexual orientation, *Andronaco, Inc. d/b/a Andronaco Industries*, 364 NLRB No. 142m slip op. at 1 and 6. Thus, I do not find this prohibition to violate the Act.

However, I reach a different conclusion with regard Section B (Jt. Exh. 8 p. 28) which includes "political beliefs" among the types of statements prohibited in the use of the company's internet and emails. As the General Counsel points out, there are some "political beliefs" that touch upon Section 7 rights, which could offend persons with contrary views. "Right to Work" legislation is one of these, *Eastex v. NLRB*, 437 U.S. 556, 569 (1978), Dues Check-Off is another, *AT&T*, 362 NLRB No. 105 slip op. at 5 (2015). The admonition not to use language that is "abusive, profane or offensive" is also unlawful because the term "offensive" is overly broad and would reasonably be interpreted to prohibit protected conduct, *NCR Corp.*, 313 NLRB 574, 577 (1993).

Respondent's Social Media Rules (Section 3.15)

Respondent's restrictions on social networking are unlawful because employees can and have used social networking to air work-related concerns. *Betty Page Clothing*,

⁶ *Flex Frac Logistics* was decided by a Board that included 2 members whose appointments were invalidated by the U.S. Supreme Court. However, before the Supreme Court ruling, the Board's decision was enforced by the U.S. Court of Appeals for the Fifth Circuit 746 F.3d 205 (5th Cir. 2014). There is no question as the validity of the Court's judgment, *Lily Transportation Corporation*, 362 NLRB No. 54 fn. 2 (2015).

361 NLRB No. 79 (2014); 359 NLRB 777 (2013). These restrictions are not limited to social networking on the school's computers, but apply to any social networking which staff members might engage in.

5 The prohibition against social networking during school hours is unlawful because "school hours" includes non-working time (i.e., lunch and breaks),

10 The school rule against its name, address, website, image, logo or phone numbers appearing in posting also is unlawful in that it is overly broad. Respondent could legally have a rule narrowly tailored to prohibit copyright or trademark infringement, but its rule is not so limited. Employees have a Section 7 right to display their employer's logo as part of Section 7 communications. *UPMC*, 362 NLRB No. 191 (2015) slip op. at 1-2, fn. 5 and at 25.⁷ The prohibition against using IHSNO's name unlawfully restricts employees' right to enlist the support of third parties in their work-related disputes with the school.

Respondent's confidentiality rule (Section 3.24)

15 IHSNO's restriction on the dissemination of "personal information" or the discussion of the affairs of teachers or staff members is unlawful because it is overly broad. It would reasonably be read to include discussions about wages and other terms and condition of employment, *Lily Transportation Corporation*, 362 NLRB (2015) slip op. 1 at fn. 3; *Flex Frac Logistics, LLC*, *supra*. An example of "personal information" would include allegations of mistreatment by or favoritism shown by a supervisor.

Offer Letters, Renewal, Non-Renewal (Section 8.03)

The Handbook section on offers, renewals and non-renewals is unlawful in the following respects:

25 Forbidding the conduct of personal business during school hours: this is overly broad because "personal business" would reasonably be read to include protected subjects and "school hours" would reasonably be interpreted to included non-working time.

30 Potential non-renewal of an employee's contract for engaging in activities that impair the employee's effectiveness: This is so broad that it would reasonably be read to include Section 7 activity, such as union organization or concerted complaining about wages, hours and other employment related matters.

35 Misrepresentation of facts to a supervisor, Negative behavior and attitude, Disparaging the school, board members or employees: Misstatements about Section 7 matters are unprotected only if they are made with malice, i.e., made with knowledge of their falsity or reckless disregard of the truth, *Southern Maryland Hospital*, 293 NLRB 1209, 1222 (1989). A prohibition against negative behavior is so ambiguous that it

⁷ The Union argues that INSNO dress code violates the Act for the same reason. I do not see the allegedly violative language in Jt. Exh. 8.

would reasonably be read to include Section 7 activity, *2 Sisters Food Group, Inc.*, 357 NLRB 1816, 1817 (2011). Disparaging statements would reasonably be interpreted to include disparaging statements about management in the context of Section 7 activity e.g., *Dalton Schools*, 364 NLRB No. 18 (2016) [teacher at private school emailed other employees accusing administration of lying to teachers as to why changes to a school play had to be made at the last minute].

Summary of Conclusions of Law

Respondent has been violating and is violating Section 8(a)(1) of the Act in the following respects:

- 10 Maintaining a handbook rule that instructs employees to seek resolution of workplace issues with their supervisor prior to discussing them with others, including fellow employees;
- Maintaining a handbook rule that indicates the employees must go through Respondent's "chain of command" with regard to work-related issues;
- 15 Maintaining a handbook rule that requires prior approval from management for the mass distribution of emails;
- Maintaining a handbook rule that states that technology use is limited to the business of Respondent;
- 20 Maintaining a handbook rule that prohibits forwarding an email without prior consent of the originator;
- Maintaining a handbook rule that prohibits using Respondent's email and/or voice mail system to transmit statements containing subjectively offensive material relating to political beliefs.
- 25 Maintaining a handbook rule prohibiting the use of Respondent's computers, etc. for personal social networking or posting;
- Maintaining a handbook rule prohibiting personal social networking or posting during school hours.
- Maintaining a handbook rule prohibiting use of IHSNO's logo, address, website, image, or phone numbers in employee postings;
- 30 Maintaining a handbook rule restricting the dissemination of "personal information" or the discussion of the affairs of teachers or staff members;
- Maintaining a handbook rule forbidding the conduct of personal business during school hours;
- 35 Maintaining a handbook rule stating that an employee's contract may not be renewed due to activities that impair their effectiveness, misstating facts to a supervisor,

displaying a negative attitude or negative behavior; or disparaging Respondent, school board employees or employees.

REMEDY

5 Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

10 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

15 The Respondent, the International High School New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

Cease and desist from:

- 20 (a) Maintaining a handbook rule that instructs employees to seek resolution of workplace issues with their supervisor prior to discussing them with others, including fellow employees;
- (b) Maintaining a handbook rule that indicates the employees must go through Respondent's "chain of command" with regard to work-related issues;
- 25 (c) Maintaining a handbook rule that requires prior approval from management for the mass distribution of emails;
- (d) Maintaining a handbook rule that states that technology use is limited to the business of Respondent;
- (e) Maintaining a handbook rule that prohibits forwarding an email without prior consent of the originator;
- 30 (f) Maintaining a handbook rule that prohibits using Respondent's email and/or voice mail system to transmit statements containing subjectively offensive material relating to political beliefs.
- (g) Maintaining a handbook rule prohibiting the use of Respondent's computers, etc. for personal social networking or posting;
- 35 (h) Maintaining a handbook rule prohibiting personal social networking or posting during school hours.
- (i) Maintaining a handbook rule prohibiting use of IHSNO's logo, address, website, image, or phone numbers in employee postings;
- 40 (j) Maintaining a handbook rule restricting the dissemination of "personal information" or the discussion of the affairs of teachers or staff members;
- (k) Maintaining a handbook rule forbidding the conduct of personal business during school hours;

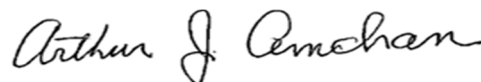
⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (l) Maintaining a handbook rule stating that an employee's contract may not be renewed due to activities that impair their effectiveness, misstating facts to a supervisor, displaying a negative attitude or negative behavior; or disparaging Respondent, school board employees or employees;
- (m) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Rescind or revise the handbook rules set forth in this Order which are listed above;
- (b) Provide all employees with any revisions to the aforementioned rules;
- (c) Advise all its employees as to any rescissions and/or revisions of the illegal handbook rules;
- (d) Within 14 days after service by the Region, post at its New Orleans, Louisiana facility copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 2016.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 2017



Arthur J. Amchan
Administrative Law Judge

⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain the following handbook rules:

- (a) which instruct employees to seek resolution of workplace issues with their supervisor prior to discussing them with others, including fellow employees;
- (b) that indicate that employees must go through Respondent's "chain of command" with regard to work-related issues;
- (c) that require prior approval from management for the mass distribution of emails;
- (d) that state that technology use is limited to the business of Respondent;
- (e) that prohibit forwarding an email without prior consent of the originator;
- (f) that prohibit using Respondent's email and/or voice mail system to transmit statements containing subjectively offensive material relating to political beliefs;
- (g) that prohibit the use of Respondent's computers, etc. for personal social networking or posting;
- (h) that prohibit personal social networking or posting during school hours;
- (i) that prohibit use of IHSNO's logo, address, website, image, or phone numbers in employee postings;
- (j) that overbroadly restrict the dissemination of "personal information" or the discussion of the affairs of teachers or staff members;
- (k) that forbid the conduct of personal business during school hours;
- (l) that state that an employee's contract may not be renewed due to activities that impair their effectiveness, misstate facts to a supervisor, display a negative attitude or negative behavior; or disparage Respondent, school board members or employees;

WE WILL NOT In any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL either rescind or revise the handbook rules listed above.

WE WILL inform each of you when the rules listed above are either rescinded or revised.

WE WILL provide each of you with a copy of the revised version of any of the rules listed above which are not entirely rescinded.

VOICES FOR INTERNATIONAL BUSINESS
AND EDUCATION, INC. d/b/a INTERNATIONAL
HIGH SCHOOL OF NEW ORLEANS

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

600 South Maestri Place, 7th Floor, New Orleans, LA 70130-3413

(504) 589-6361, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-182632 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (504) 589-6389.